

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**HB 898 - SB 805**

March 7, 2021

**SUMMARY OF BILL:** Creates a rebuttable presumption that a person charged with a bailable offense will not violate the conditions of his or her release if the offense is expungable and the person has not been previously convicted of an offense that is ineligible for expunction. Requires such person to be released pending trial on the person's recognizance or upon the execution of an unsecured appearance bond.

Authorizes defendants whose bail has been set not to exceed \$7,500 to execute a bail bond with the clerk of the court in an amount equal to 10 percent. Authorizes the clerk to retain 10 percent of such as an administrative fee. Requires that bail amount paid be first applied to the payment of any ordered restitution.

**ESTIMATED FISCAL IMPACT:**

**Decrease Local Revenue – Net Impact - \$4,568,000/FY21-22 and Subsequent Years**

**Decrease Local Expenditures - \$3,587,200/FY21-22 and Subsequent Years**

Assumptions:

- Based on information previously provided by the Tennessee Bureau of Investigation (TBI), the average number of expunctions processed by TBI per year is 64,000.
- TBI processes expunctions resulting from petitions and the completion of diversion programs.
- This analysis assumes 50 percent, or 32,000 (64,000 x 50%), of such expunctions result from petitions to the court; therefore, it is reasonable to assume that over 25,000 people each year charged with an offense eligible of expunction, with no prior conviction of an offense that is ineligible for expunction, will be released pending trial.
- The analysis estimates the average bail is \$4,000 per offender.
- This analysis estimates that 40 percent of eligible individuals charged would otherwise pay bail or have a bail bondsman to post bail on behalf of the individual.
- This analysis estimates that 35 percent of such individuals out on bail will have bail returned to the individual or the bail bondsman, resulting in local governments retaining five percent of bail paid (40% - 35%).
- The proposed legislation will result in a mandatory recurring decrease in local revenue estimated to exceed \$5,000,000 statewide (25,000 x \$4,000 x 5%).

- It is estimated that at least 15,000 defendants will qualify and pay the 10 percent bail not to exceed \$7,500.
- The analysis estimates the average bail is \$4,000 per offender.
- According to the Boston College Law Review article, *Misdemeanors by the Numbers*, Kentucky has a 72 percent conviction rate for misdemeanor offenses. It is assumed that Tennessee has a similar rate.
- Authorizing the clerks to retain 10 percent of such as an administrative fee will result in an increase in local government revenue of \$432,000  $\{ [(\$4,000 \times 10\%) \times 15,000] \times 10\% \} \times 72\%$ .
- Some decrease in local incarceration expenditures resulting from releasing individuals from local jail prior to a court hearing will be offset by an increase in local incarceration expenditures resulting from longer local incarceration sentences without the use of time served credits, additional processing efforts to release individuals, and law enforcement efforts resulting from released individuals reoffending.
- Based on the 2020 Fiscal Review Committee survey, the weighted average cost to local governments to house an inmate in a local jail facility is \$73 per day.
- According to the 2019 Knox County *Jail Population & Justice System Analysis*, the three-year average for pretrial time in jail custody is 11.7 days.
- However, of those released pre-trial per this legislation and are not convicted, there will be a recurring decrease in local expenditures of \$3,587,220  $\{ [(25,000 \text{ people} \times 60\% \text{ that wouldn't pay bail under current law}) \times 28\% \text{ not convicted}] \times (\$73 \text{ cost} \times 11.7 \text{ average pretrial days}) \}$ , beginning in FY21-22.
- The net mandatory recurring decrease in local government revenue as a result of this legislation, beginning in FY21-22, is \$4,568,000  $[\$5,000,000 - \$432,000]$ .

## CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Bojan Savic, Interim Executive Director

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